

WILLIAM L. STERN (CA SBN 96105)
 WStern@mofo.com
 MORRISON & FOERSTER LLP
 425 Market Street
 San Francisco, California 94105-2482
 Telephone: 415.268.7000
 Facsimile: 415.268.7522

ERIN M. BOSMAN (CA SBN 204987)
 EBosman@mofo.com
 JULIE Y. PARK (CA SBN 259929)
 JuliePark@mofo.com
 KAI BARTOLOMEO (CA SBN 264033)
 KBartolomeo@mofo.com
 MORRISON & FOERSTER LLP
 12531 High Bluff Drive
 San Diego, California 92130-2040
 Telephone: 858.720.5100
 Facsimile: 858.720.5125

Attorneys for Defendant
 FITBIT, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

KATE MCLELLAN, TERESA BLACK,
 DAVID URBAN, ROB DUNN, RACHEL
 SAITO, TODD RUBINSTEIN, RHONDA
 CALLAN, JAMES SCHORR, and BRUCE
 MORGAN, Individually and on Behalf of All
 Others Similarly Situated,

Plaintiffs,

v.

FITBIT, INC.,

Defendant.

Case No. 16-cv-00036-JD

**DECLARATION OF KAI S.
 BARTOLOMEO IN SUPPORT OF
 DEFENDANT FITBIT, INC.'S RESPONSE
 TO PLAINTIFFS' STATEMENT ON THE
 STATUS OF ARBITRATION
 PROCEEDINGS**

Date: N/A
 Time: N/A
 Ctrm: 11, 19th Floor

The Honorable James Donato

Date Action Filed: May 8, 2015

JUDITH LANDERS, LISA MARIE BURKE,
 and JOHN MOLENSTRA, Individually and on
 Behalf of All Others Similarly Situated,

Plaintiffs,

v.

FITBIT, INC.,

Defendant.

Case No. 16-cv-00777-JD

1 I, Kai S. Bartolomeo, hereby declare as follows:

2 1. I am an attorney admitted to practice law in the courts of the State of California
3 and am a member of the Bar of this Court. I am an associate at Morrison & Foerster LLP,
4 counsel of record for Defendant Fitbit, Inc. (“Fitbit”) in the above-captioned action. I submit this
5 Declaration in Support of Fitbit’s Response to Plaintiffs’ Statement on the Status of Arbitration
6 Proceedings. I have personal knowledge of the facts set forth herein, and if called as a witness, I
7 could and would testify competently thereto.

8 2. On October 27, 2017, I contacted counsel for Plaintiffs to request Plaintiffs’
9 authority for their position that Rob Dunn—as the lone opt-out Plaintiff proceeding in federal
10 court following the Court’s orders on arbitration—could “represent all putative class members, as
11 opposed to the opt-outs only.” A true and correct copy of my October 27, 2018 email is attached
12 hereto as **Exhibit 1**.

13 3. Plaintiffs’ counsel responded to my email that same day and, while counsel
14 directed Fitbit to Plaintiffs’ prior arbitration briefing, he provided no supporting authority. A true
15 and correct copy of Plaintiffs’ counsel’s October 27, 2017 email, excluding the attachment, is
16 attached hereto as **Exhibit 2**.

17 4. On June 5, 2018, I contacted the American Arbitration Association’s New Jersey
18 office¹ to confirm that the AAA received Fitbit’s June 1, 2018 payment of (1) all filing fees and
19 (2) the arbitrator’s compensation deposit in the matter of *Kate McLellan v. Fitbit, Inc.*, AAA Case
20 Number 01-18-0001-3597. The AAA representative with whom I spoke confirmed that the AAA
21 received Fitbit’s full \$4,200 payment and that the fees and deposit had been “applied” to the
22 matter. I inquired as to “next steps,” and the representative informed me that the AAA would be
23 assigning a case manager, who would reach out to the parties by mail or email regarding the path
24 forward.

25
26 ¹ Fitbit received a letter on April 25, 2018, confirming receipt of Claimant Kate
27 McLellan’s arbitration demand. The AAA’s New Jersey office address and telephone number are
28 listed on that letter.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct. Executed this 28th day of June, 2018, in San Diego, California.

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4 /s/ Kai S. Bartolomeo
Kai S. Bartolomeo
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ECF ATTESTATION

I, William L. Stern, am the ECF User whose ID and Password are being used to file this document. I attest that concurrence in the filing of this document has been obtained from the signatory.

Dated: June 28, 2018

MORRISON & FOERSTER LLP

By: /s/ William L. Stern

William L. Stern

Attorneys for Defendant
FITBIT, INC.